

STATE OF NEW YORK COUNTY OF CHEMUNG
SUPREME COURT

CHRISTOPHER J. MOSS, in his official
capacity as Chemung County Executive,
and **M. HYDER HUSSAIN**, in his official
Capacity as Chemung County Attorney;

Petitioners-Plaintiffs,

For a Judgement Pursuant to Article 78 and a
Declaratory Judgment Pursuant to Section 3001
of the Civil Practice Law and Rules

-against-

CHEMUNG COUNTY LEGISLATURE; JOHN C. PASTRICK, in his official capacity as Chemung County Legislator; **DAVID L. MANCHESTER**, in his official capacity as Chemung County Legislator; **MARTIN D. CHALK**, in his official capacity as Chemung County Legislator; **L. THOMAS SWEET**, in his official capacity as Chemung County Legislator; **ROBERT BRIGGS**, in his official capacity as Chemung County Legislature; **JOSEPH C. BRENNAN**, in his official capacity as Chemung County Legislator; **WILLIAM MCCARTHY**, in his official capacity as Chemung County Legislator; **MARK MARGESON**, in his official capacity as Chemung County Legislator; **SCOTT DRAKE**, in his official capacity as Chemung County Legislator; **BRIAN HYLAND**, in his official capacity as Chemung County Legislator; **MICHAEL SMITH**, in his official capacity as Chemung County Legislator; **JOHN BURIN**, in his official capacity as Chemung County Legislator; **RODNEY J. STRANGE**, in his official capacity as Chemung County Legislator; **CHRISTINA SONSIRE**, in her official capacity as Chemung County Legislator; **PEGGY L. WOODARD**, in her official capacity as Chemung County Legislator; and **LINDA PALMER**, Clerk of the Chemung County Legislature, in her official capacity as Clerk, and **BRYAN MAGGS**, in his official capacity as Attorney for the Legislature and Special Districts,

Respondents-Defendants.

**VERIFIED
PETITION AND
COMPLAINT**

Index No.:

RJI No.:

Petitioners-Plaintiffs Christopher J. Moss, in his official capacity as Chemung County Executive (“Petitioner” or “County Executive”) and M. Hyder Hussain, in his official capacity as Chemung County Attorney (“Petitioner” or “County Attorney”), by and through their attorneys, Whiteman Osterman & Hanna, LLP as and for their Verified Petition and Complaint respectfully allege as follows:

PRELIMINARY STATEMENT

1. This is a hybrid CPLR Article 78 and declaratory judgment action in which the Petitioners challenge Local Law No. 2 of 2019 enacted by the County of Chemung Legislature (“Local Law 2”), comprised of the individual respondents (“Respondents” or the “County Legislature”), which improperly attempts to retroactively sanction Respondents’ prior unauthorized usurpation of the powers of the County Executive, an elected County official, and the County Attorney, the sole legal advisor to the County. A copy of Local Law 2 is attached as **Exhibit A** and incorporated by reference herein.

2. Petitioners previously brought a related proceeding, *Christopher J. Moss, et al. v. Chemung County Legislature, et al.*, Index No. 2019-1251 (the “First Proceeding”), in which Petitioners sought to invalidate a series of Respondents’ politically motivated attempts to disrupt the separation of powers within the County of Chemung’s government by misappropriating authority that does not belong to them under the terms of the Chemung County Charter and New York law.

3. In the First Proceeding, Petitioners challenged an act that was unequivocally unauthorized under the County Charter in the first instance: the Legislature’s appointment of Respondent Bryan Maggs as attorney to the Assistant County Attorney position of Attorney for the Legislature and Special Districts, and delegation of functions reserved strictly to the County

Attorney under the express terms of the Charter and New York law, including the power to draft and prepare local laws, resolutions and other legal acts.

4. In this proceeding, Petitioners now challenge Respondents' patently improper, post-hoc attempt to ratify their prior unauthorized actions through the adoption of Local Law 2.

5. For a period of nearly twenty years, the position of Attorney for the Legislature and Special Districts has existed within the County's government under the exclusive authority of the Department of Law, an administrative unit headed by the County Attorney and organized under the direct supervisory authority of the County Executive pursuant to Article XVI of the Charter. A copy of the County Charter is attached as **Exhibit B** and incorporated by reference herein.

6. The position was intended to provide legal advice not only to the Legislature, but also to the County's Special Districts, which are administrative units under the Executive Branch.

7. Pursuant to the clear terms of the County Charter, the authority to appoint and supervise an individual to the position of the Attorney for the Legislature and Special Districts is vested within the County Executive, the Chief Executive Officer and administrative head of the County's government. Similarly, the power to appoint or delegate functions to the Attorney for the Legislature and Special Districts rests within the County Attorney, as the sole legal advisor to the County under the terms of the County Charter and New York law.

8. Specifically, Article III of the County Charter expressly states that the County Executive must supervise and direct the organization of departments and administrative units, the head of which the County Executive has the power to appoint.

9. The County Executive has the ability to supervise and direct the organization of the Department of Law, an administrative unit within County government, because he has the express authority to appoint the County Attorney as the Head of the Department of Law under Article XVI of the Charter.

10. The position of the Attorney for the Legislature and Special Districts was expressly established by Resolution No. 01-120 under the Department of Law, and thus falls squarely within the County Executive's supervisory and directory powers over an administrative unit of government, the head of which he enjoys the full authority to appoint. A copy of Resolution No. 01-120 is attached as **Exhibit C** and incorporated by reference herein.

11. Thus, under the plain terms of the County Charter, the power to not only appoint an Attorney for the Legislature and Special Districts, but also to supervise that position in general, has always been vested within the Executive Branch of the County's government.

12. Similarly, pursuant to Article XVI of the County Charter, the County Attorney has the power to both appoint and delegate functions to Assistant County Attorneys, such as the position of Attorney for the Legislature and Special Districts.

13. When County government transitioned to the appointment and confirmation of new leaders in January 2019, Respondents made a series of improper attempts to mount an end run around the County Executive's supervisory and directory authority over the Attorney for the Legislature and Special Districts, and the County Attorney's ability to delegate and transfer functions to an individual in the position.

14. While acting County Executive Christopher Moss's appointment of Petitioner M. Hyder Hussain as County Attorney was pending before the Legislature for confirmation, the Legislature rushed to fill the position of Attorney for the Legislature and Special Districts to

prevent the County Executive and the soon-to-be confirmed County Attorney from exercising their rightful authority to fill the vacancy under the terms of the Charter.

15. By Resolution No. 19-003 of 2019, the Legislature, without authority and in clear derogation of the County Charter and New York law, appointed Bryan Maggs, Esq., as the Attorney for the Legislature and Special Districts. Copies of the January 1, 2019 Special Meeting Minutes and Resolution No. 19-003 are attached as **Exhibit D** and incorporated by reference herein.

16. Shortly thereafter, the Legislature was faced with the staunch reality that under the clear terms of its own County Charter, it lacked any authority whatsoever to appoint Attorney Maggs to the position or to delegate any functions strictly reserved to the County Attorney under the County Charter.

17. In short, when it became clear that the County Legislature unlawfully appointed Attorney Maggs in the first instance, the Legislature resorted to a series of improper actions to retroactively sanction what they had done and minimize the powers of the County Executive and County Attorney.

18. The Legislature's first attempt to right its prior wrong came in the form of Resolution No. 19-192, which was introduced and passed at a February 28, 2019 special meeting, in a flawed attempt to amend the terms of the Charter and divest the County Attorney and County Executive of their power to appoint and supervise an individual to the position of Attorney for the Legislature and Special Districts. Copies of the February 28, 2019 Special Meeting Minutes and Resolution No. 19-192 are attached as **Exhibit E** and incorporated by reference herein.

19. Resolution No. 19-192 attempted to “clarify the appointment authority and going forward employment status for the Attorney to the Legislature and Special Districts” by “ratifying” the prior unlawful appointment of Attorney Maggs, and further stated that all future appointments would be vested in the exclusive authority of the Legislature. A video of the Legislature’s February 28, 2019 meeting, during which the Legislature expressly states its intent to “ratify” the appointment of Attorney Maggs, is available at <https://www.facebook.com/chemungcountymatters/videos/special-meeting-of-the-legislatures-personnel-committee-meeting-on-february-28-2/2319266581427537/>.

20. In passing Resolution No. 19-192, the Legislature effectively attempted to amend the terms of the County Charter in its favor—an act which cannot be done by mere legislative resolution under New York law and the terms of the Charter itself.

21. Because mere legislative resolution could not accomplish the overhaul of the County Charter that Respondents desired, Respondents made a final attempt, after the First Proceeding was already filed, to retroactively sanction its prior wrongful acts by adopting Local Law 2 purporting to amend the Charter.

22. The Legislature impermissibly introduced Resolution 19-254 for the proposed Local Law 2 at special meeting on February 28, 2019 held upon only 24 hours’ notice in violation of New York’s Open Meetings Law. On or about March 11, 2019, the Legislature subsequently adopted Resolution 19-254 passing Local Law No. 2 of 2019. A copy of the pertinent portions of the Legislature’s March 11, 2019 meeting minutes is attached as **Exhibit F** and incorporated by reference herein.

23. Local Law 2, as adopted, expressly amends the County Charter for the sole purpose of bestowing upon the County Legislature and the Chairman of the Legislature power it did not previously have.

24. Local Law 2 purports to dramatically alter the balance of power in County government by abolishing, curtailing and significantly altering the County Executive's supervisory and appointment authority, restructuring the powers and duties of the County Executive and County Attorney, and designating the Attorney for the Legislature and Special Districts as the sole legal advisor to the Legislature responsible for preparing and drafting all official acts of a civil nature, including resolutions, ordinances and local laws.

25. Even Local Law 2, however, cannot accomplish the significant overhaul of County government that the Legislature desires, nor ratify the Legislature's previous unauthorized appointment of Attorney Maggs under well-settled principles of New York law, which mandate that retroactive or remedial operation of a local law is impermissible where, as here, the local law does not expressly require it.

26. Moreover, in adopting Local Law 2, the Legislature failed to afford the public the safeguard of a mandatory referendum under Section 23 of New York's Municipal Home Rule Law, which requires a legislative body to provide the public with an opportunity to lawfully express its views on proposed legislation at a general election where the legislation at issue abolishes, transfers or curtails the powers of an elective officer.

27. Local Law 2 is subject to mandatory referendum because it significantly abolishes, transfers and curtails the powers of the County Executive and purports to enact a sweeping overhaul of the County Charter. The language of the Local Law, however, calls for

only a permissive referendum, and thus fails to comply with the requirements of the Municipal Home Rule Law.

28. Local Law 2 also suffers from several other fatal deficiencies. By expressly delegating functions reserved to the County Attorney, including the ability to prepare and draft legal acts of a civil nature, Local Law 2 violates New York County Law and the mandate that the County Attorney serve as the sole legal advisor to the County on all official acts of a civil nature.

29. Local Law 2's wrongful misappropriation of authority that rightfully belongs to the County Executive and County Attorney is also in clear violation of the doctrine of separation of powers between the Executive and Legislative branches prescribed in the County Charter.

30. Accordingly, the County Executive and Attorney are entitled to a judgment (1) annulling and invalidating Resolution No. 19-254 adopting Local Law 2 in its entirety, (2) declaring that Local Law 2 has no retroactive operation and cannot ratify the prior appointment of Attorney Maggs to the position of Attorney for the Legislature and Special Districts within the Department of Law, and (3) further declaring that any further attempt by the County Legislature to enact a local law to amend the Charter and vest the Legislature with the authority to appoint an Attorney for the Legislature and Special Districts is subject to mandatory referendum.

PARTIES

31. Petitioner-Plaintiff Christopher J. Moss, the Chemung County Executive, took office January 1, 2019 and is the Chief Executive Officer and the administrative head of the Chemung County Government.

32. Petitioner-Plaintiff M. Hyder Hussain, the Chemung County Attorney, was appointed to the position of Chemung County Attorney by Petitioner-Plaintiff Christopher J. Moss on January 1, 2019 and such appointment was confirmed by the Chemung County

Legislature by Resolution 19-125 on January 4, 2019. A copy of Resolution 19-125 is attached as **Exhibit G** and incorporated by reference herein.

33. Respondent-Defendant Chemung County Legislature is the governing Legislative Branch of the Chemung County Government pursuant to Section 203 of the Chemung County Charter. See Ex. B, Art. II § 203, pp. 21-23.

34. Respondents-Defendants John C. Pastrick, David L. Manchester, Martin D. Chalk, L. Thomas Sweet, Robert Briggs, Joseph C. Brennan, William McCarthy, Mark Margeson, Scott Drake, Brian Hyland, Michael Smith, John Burin, Rodney J. Strange, Christina Sonsire, and Peggy L. Wood, in their official capacities as Chemung County Legislators, took office on January 1, 2019 and serve as the members of Respondent-Defendant Chemung County Legislator.

35. Respondent-Defendant Bryan Maggs was appointed as Attorney for the Legislature and Special Districts by Respondent-Defendant David L. Manchester on January 1, 2019.

36. Respondent-Defendant Linda Palmer, the Chemung County Clerk, took office on January 1, 2019 and is the duly appointed clerk to the Chemung County Legislature. See Ex. B, Art. II § 213, p. 25.

VENUE

37. Venue for this proceeding is properly laid in Chemung County pursuant to CPLR 506(b) because it is a county within the judicial district where the Respondents made the determination complained of, where the material events took place, and where the principal office of Respondents is located.

BACKGROUND

A. The Powers Established by the County Charter

38. The County Charter establishes the form of government for the County, and is designed with the express purpose of separating legislative and executive functions and responsibilities. See Ex. B, Art. I § 101, p. 1.

The County Executive

39. Article III of the Charter governs the Executive Branch, and provides for the election of a County Executive to serve as the Chief Executive Officer and administrative head of the County's government. See Ex. B, Art. III § 302, p. 26.

40. The County Executive's powers and duties include, among other things, the ability to supervise and direct the organization and reorganization of any departments or other administrative units, the head of which the County Executive has the power to appoint. Ex. N, Art. III § 302, p. 26.

41. An "administrative unit" is defined under the County Charter as "any department, executive division, office, or other agency of County Government, except a bureau, division, section, or other subordinate part of the foregoing." Ex. N, Art. I § 105, p. 2.

42. The Department of Law is an administrative unit, because it is a department within County government.

43. Under Section 302 of the Charter, the County Executive has the ability to supervise, organize, and reorganize "each department or other administrative unit, the head of which he has the power to appoint." Ex. N, Art. III § 302(b), p. 26.

44. The County Executive has the power to appoint the County Attorney, who serves as the head of the Department of Law. See Ex. B, Art. XVI § 1601, p. 53.

45. Thus, the County Executive also has the power to supervise, organize, and reorganize the Department of Law. See Ex. B, Art. III § 302(b), p. 26.

46. The County Executive also enjoys other, broad appointment powers as provided for within the Charter, including the power to appoint the head of every department or other administrative unit not administered by an elective official under Section 309, appoint heads and members of other offices, boards and administrative units under Article XXVII, Section 2704, and delegate administrative functions where the Charter does not expressly delegate those functions under Section 2705. See Ex B, Art. III § 309, Art. XXVII §§ 2704, 2705, pp. 30, 63-64.

47. The ability to appoint administrative leaders of Special Districts also lies within the County Executive. In regard to the Sewer and Solid Waste Management Districts, the County Executive has the authority to appoint administrative members pursuant to Article XXIX, Section 2901. See Ex. B, Art. XXIX § 2901, p. 66.

The Department of Law and County Attorney

48. The Department of Law exists as an administrative unit within the Executive Branch, and is headed by the County Attorney. See Ex. B, Article XVI, § 1601, p. 53.

49. Pursuant to County Law § 501, a county attorney “shall be *the* legal advisor” to the Legislature and “every officer whose compensation is paid from county funds in *all matters involving an official act of a civil nature.*”

50. County Law § 502 further provides that a county attorney has the authority to appoint an assistant county attorney to perform duties relating to those ordinarily reserved to the County Attorney, as authorized by the Legislature.

51. In other words, a County Attorney is to serve as the sole legal advisor to the Legislature and all officers paid by the County on all legislative and civil acts, and the Legislature is not permitted to appoint its own independent attorney.

52. Instead, if any functions of the County Attorney are to be delegated at all, they must be delegated by the County Attorney to an Assistant County Attorney.

53. In keeping with the requirements set forth in the County Law, the County Charter provides that the County Attorney is appointed by and serves directly under the authority of the County Executive. See Ex. B, Article XVI, § 1601, p. 53.

54. The County Attorney's duties expressly include:

- a) Be the *sole* legal advisor of the County;
- b) Advise all County officers and employees in *all County legal matters* of a civil nature;
- c) Prosecute or defend all actions or proceedings of a nature brought on or against the County;
- d) *Prepare resolutions, ordinances, legalizing acts and local laws, together with notices and other items in connection therewith*, to be presented for action by the County Legislature;
- e) Perform such other and related duties as may be prescribed by law, the County Executive or the County Legislature.

See Ex. B, Article XVI, § 1601, p. 53 (emphasis supplied).

55. Additionally, pursuant to Article XVI, Section 1603 of the Charter, the County Attorney has the express authority to appoint Assistant County Attorneys as authorized by the County Legislature. Ex. B, Art. XVI § 1603, p. 54.

56. An Assistant County Attorney, as appointed, serves at the pleasure of the County Attorney within the Department of Law.

57. As the head of the Department of Law, an administrative unit within County government, the County Attorney also has the ability to appoint all officers and employees whose positions are organized and authorized by the Department of Law. See Ex. B, Art. III § 309, p. 30.

The County Legislature

58. The County Legislature is defined by the Charter as the “elective legislative body of the County of Chemung.” Ex. B, Art. I § 105, p. 2. Thus, under the express terms of the Charter, the County Legislature is not an *administrative unit*, but, rather, the “governing and policy-determining body” of the County. Ex. B, Art. I § 201, p. 3.

59. The powers and duties of the County Legislature are summarized in Section 203 of the Charter. Ex. B, Art. II § 203, pp. 21-23.

60. Although the County Legislature has the power, by local law, to create, alter, combine or abolish County administrative units not headed by elective officials, it does not share in the County Executive’s broad powers to appoint the heads of administrative units. Ex. B, Art. II § 203(e), p. 22.

61. Section 203 does not empower the County Legislature to usurp the authority of the County Attorney and/or County Executive to appoint an Assistant County Attorney authorized under the Department of Law, an administrative unit headed by the County Attorney. Ex. B, Art. II § 203, pp. 21-23.

62. The Chairman of the County Legislature does not share in the County Executive’s broad authority to appoint the heads of administrative units and the members thereunder. Ex. B, Art. II § 204, p. 23. Instead, the Charter specifically permits the Chairman of the County

Legislature to only appoint “a clerk who shall serve during the pleasure of the Chairman of the County Legislature.” Ex. A, Art. II § 213, p. 25.

B. The Position of Attorney for the Legislature and Special Districts

63. The position of Attorney for the Legislature and Special Districts has existed within County government for nearly 20 years.

64. The position was first created in 2001, when Linda Palmer, the Clerk of the Legislature, submitted civil service paperwork detailing the position and its corresponding duties.

65. Critically, Resolution No. 01-120 confirming the designation of the Attorney for the Legislature and Special Districts unequivocally provides that the “authority” for the position and appointment derived from “Article XVI of the Chemung County Charter.” As set forth extensively above, Article XVI governs the Department of Law, organized under the Executive Branch of County government. See Ex. ____, p. 53.

66. The job description for the position allotted 50% of the work time to the County Legislature, and 50% of the work time to two Special Districts, the Sewer District and the Solid Waste Management District. See Ex. ____.

67. Among other things, the job duties for the Attorney for the Legislature and Special Districts include “legal and technical consulting in areas under the jurisdiction of the Legislature, investigating, researching, and evaluating prepared legislation” and providing general legal services to the members of the administrative boards of the Special Districts. See Ex. _____. Such members, as set forth above, are appointed by the County Executive.

68. The job description further provides that the Attorney for the Legislature and Special Districts' duties cannot be "*inconsistent with the Chemung County Charter and applicable laws and regulations.*" See Ex. ____ (emphasis supplied).

69. Applicable laws include, *inter alia*, the New York County Law.

70. Importantly, the role of the Attorney for the Legislature and Special Districts is not to *prepare* legislation, but rather to "*evaluate prepared legislation.*" Ex. ____.

71. This is because the sole authority to prepare legislation for action by the Legislature rests in the County Attorney, subject, of course, to the County Attorney's ability to delegate certain functions to Assistant County Attorneys (like the Attorney for the Legislature and Special Districts) in compliance with the Charter and New York's County Law.

72. The Attorney for the Legislature and Special District position was described in its initial 2001 civil service paperwork as a position entailing "substantially the same kind and level of work" done by the County Attorney. See Ex. ____.

73. Then-acting County Executive, Thomas Santulli, appointed Richard Keyser as the first attorney to serve in the position as Attorney for the Legislature and Special Districts and filed the request for the Legislature to confirm the appointment in 2001 by Resolution No. 01-120. See Ex. ____.

74. The Legislature subsequently "confirm[ed] the appointment *by the County Executive* of Richard Keyser to the position of Attorney for the Legislature and Special Districts." Ex. C (emphasis supplied).

75. In its confirmation, the Legislature specifically stated that the County Executive appointed Keyser to the position by letter dated April 11, 2001. A copy of this letter is attached as **Exhibit ____** and incorporated by reference herein.

76. When the request was made for the Legislature to confirm the County Executive's appointment of Keyser, Mr. Keyser was appointed pursuant to Article XVI of the County Charter, governing the Department of Law headed by the County Attorney, to an Assistant County Attorney position in the Department of Law. See Ex. ____.

77. The attorney position line item in the Legislature's current budget confirms that the attorney position was created under the Department of Law and was appointed by the County Executive in 2001. A copy of the budget is attached as **Exhibit ____** and incorporated by reference herein.

78. Additionally, the "Attorney of the Special Districts" budgetary line item for the Solid Waste District expressly states that the attorney is to be paid *as an Assistant County Attorney*. See Ex. ____.

79. Richard Keyser, the County Executive's original appointee as the Attorney for the Legislature and Special Districts, served in the position until January 2019.

C. **The Legislature's Wrongful Appointment of Brian Maggs, Esq. as Attorney for the Legislature and Special Districts**

80. On January 1, 2019, 15 new members of the County Legislature took their oath of office as legislators, and so began the Legislature's campaign to deprive the Executive Branch of its powers under the County Charter.

81. County Executive Christopher Moss took office on January 1, 2019.

82. At the time, the position of the County Attorney was vacant.

83. Prior to taking office, Moss intended to appoint Matthew Rosno, Esq., as the County Attorney by January 1, 2019. However, Mr. Rosno passed away just days before his planned appointment.

84. As of January 1, 2019, Moss enjoyed the power to appoint an Assistant County Attorney to fill the vacant Attorney for the Legislature and Special Districts position in the Department of Law while the position of County Attorney was vacant. See Ex. B, Art. III, § 302, pp. 26-28 (providing the County Executive with the authority to organize or re-organize the Department of Law); See Ex. B, Art. XVI, pp. 53-54; See Ex. A, Art. XXVII, § 2704, pp. 63-64 (“The County Executive shall appoint the head of any other offices, boards, administrative units and *members* thereof”); Ex. B, Art. XXVII, § 2705, p. 64 (“Administrative functions not otherwise assigned by this Charter shall be assigned by the County Executive to an administrative unit”).

85. By letter dated January 1, 2019, Moss instead appointed M. Hyder Hussain, Esq. as County Attorney, pursuant to, and authorized under, Article XVI, Department of Law, pending confirmation by the County Legislature.

86. Attorney Hussain, upon confirmation of his appointment, would have also enjoyed the full power and ability under the plain terms of the County Charter to appoint the members of the Department of Law, the administrative unit of which Attorney Hussain is the head, including the Attorney for the Legislature and Special Districts. See Ex. B, Art. XVI, pp. 53-55.

87. Attorney Hussain would have also held the power to appoint the Attorney for the Legislature and Special Districts, upon his confirmation, because the position is an Assistant County Attorney within the Department of Law. Ex. B, Art. XVI, pp. 53-45.

88. While the appointment of Attorney Hussain was pending before it, the County Legislature improperly mounted an end run around the County Executive and County Attorney’s ability to appoint the Attorney for the Legislature and Special Districts.

89. On January 1, 2019, Chairman of the Legislature David Manchester by Resolution 19-003 illegally and without authority appointed Bryan Maggs, Esq., as the Attorney for the Legislature and Special Districts. See Ex. ____.

90. The authority cited by the County Legislature within Resolution 19-003 for the appointment of the Attorney for the Legislature and Special Districts was Section 203 of the Charter. See Ex. ____.

91. However, as set forth extensively above, nowhere within Section 203 of the Charter is there any provision (1) permitting the Chairman to appoint anyone other than the Clerk of the Legislature or (2) permitting the Legislature to appoint any members of the Department of Law, an administrative unit headed by the County Attorney and supervised by the County Executive. Ex. B, Art. II § 203, pp. 21-23.

92. As an aside, even assuming Chairman Manchester had the power to appoint an Attorney for the Legislature and Special Districts (it is respectfully submitted that he did not), the Legislature, in order to fill the vacancy in the position when Richard Keyser retired on December 31, 2018, must have requested the Civil Service commission to evaluate the position and, within four months after the occurrence of such vacancy, have it determined whether the position, as then constituted, is properly classified in the exempt class. See N.Y. Civ. Serv. Law § 41.

93. By letter dated January 1, 2019 addressed to the County Legislature, Chairman Manchester memorialized his appointment of Bryan Maggs as the Attorney for the Legislature and Special Districts. A copy of Chairman Manchester's January 1, 2019 appointment letter is attached as **Exhibit** ____ and incorporated by reference herein.

94. In his appointment letter, Chairman Manchester falsely and erroneously claimed that his authority to appoint Bryan Maggs stemmed from Section 213 of the County Charter.

However, as set forth above, Section 213 only permits Chairman Manchester to appoint a Clerk of the Legislature, whose duties are to serve as a records custodian to the Chairman. See Ex. B, Art. II § 213, p. 25.

95. The impropriety of this claim is underscored most notably by the fact that the position of the Clerk of the Legislature is *already filled* by Linda Palmer, a non-attorney.

96. Three days later, by Resolution No. 19-125, Attorney Hussain was confirmed as County Attorney by the County Legislature. A copy of Resolution No. 19-125 is attached as **Exhibit ____** and incorporated by reference herein.

97. By the time of his confirmation, Attorney Hussain was effectively stripped of his ability to appoint the Attorney for the Legislature and Special Districts, an Assistant County Attorney and member of the administrative unit of which he is the head.

D. The County Executive's attempts to resolve the erroneous appointment of Bryan Maggs, Esq.

98. On or about February 21, 2019, Petitioner Moss and some of the Chemung County Legislators met in a closed session.

99. During the meeting, the legislators were informed that their actions by appointing Attorney Maggs were illegal and beyond the power of the Legislature.

100. The Legislature refused to remedy its error or otherwise rescind its appointment of Attorney Maggs.

101. In the meantime, the Legislature, through the actions of independent Legislators, began proposing new measures to divest the County Executive of its authority under the terms of the Charter to appoint members and heads of administrative units.

102. Upon information and belief, Christina Sonsire, Chemung County 7th District Legislator, submitted a resolution laying out a proposal that called for the creation of a system to

limit the County Executive's ability to nominate individuals to serve as the head of County Departments, such as the Department of Law.

103. Due to the Legislature's unwillingness to correct their improper acts, County Executive Moss was forced to take independent action. By letter dated February 27, 2019, Petitioner Moss, in his capacity as County Executive and the supervisor of the Department of Law, notified Attorney Maggs that his services would no longer be needed. A copy of Petitioner Moss's February 27, 2019 letter is attached as **Exhibit ____** and incorporated by reference herein.

104. County Executive Moss objected to Respondents' appointment of Attorney Maggs primarily due to the Legislature's lack of any jurisdiction or authority to do so under the terms of the Charter.

105. County Executive Moss also objected to the appointment of Attorney Maggs due to his concern that Attorney Maggs presented conflicts of interest and ethics issues, in light of the fact that taxpayers were effectively paying for legal work conducted by the law firm of which County Maggs was a partner.

106. By letter dated February 27, 2019, Chairman Manchester stated that the Attorney for the Legislature *and* Special Districts was a position created for the *sole purpose* of acting as a "confidential attorney for the Legislature." A copy of Chairman Manchester's February 27, 2019 letter is attached as **Exhibit ____** and incorporated by reference herein.

107. Chairman Manchester's bold assertion blatantly ignored that the position of Attorney for the Legislature and Special Districts, from its inception, was designed to supply legal services to *both* the Executive and Legislative branches by splitting its percentage of work time between the Legislature and Special Districts. See Ex. [civil service paperwok]____ (describing the Attorney for the Legislature and Special Districts' differing duties for the

Legislature and Special Districts); Ex. ____ (stating that the Attorney for the Legislature and Special Districts would promote a positive working relationship within County Government by serving “*both* the Executive and the Legislature”) (emphasis supplied).

108. In his February 27 letter, Chairman Manchester expressly conceded that the County Executive has the power to supervise the organization of administrative units headed by a department head that the County Executive has the power to appoint, such as the Department of Law, pursuant to Section 302(b) of the Charter.

109. Chairman Manchester nonetheless asserted that the County Legislature is an “administrative unit” under Section 309 of the Charter and that, as “Chairman of the Legislature, I am the head of that unit of government and have appointment authority under the Charter for appointment of non-elected positions within the Legislature.”

110. Section 309 of the Charter provides as follows:

All other officers and employees of each department or other *administrative unit* shall be appointed by the head thereof, unless otherwise provided in this Charter.

See Ex. B, Art. III § 309, p. 30.

111. The County Legislature is not an “*administrative unit*” under the terms of the County Charter. Under the definitions set forth in the Charter, the County Legislature is defined as the “elective *legislative body* of the County of Chemung.” See Ex. B, Art. I § 105, p. 2.

112. Nor is Chairman Manchester an “administrative head” of an “administrative unit.”

113. Instead, Chairman Manchester was elected as a County Legislator, which is defined as a “person elected from a legislative district to represent it,” and was subsequently elected to serve as the Chairman under Section 204 of the Charter. Ex. B, Art. I § 105, p. 2.

D. The County Legislature's Improper Attempt to Amend the Charter by Mere Legislative Resolution

114. When it became clear that the County Legislature lacked any authority under the County Charter to appoint the Attorney for the Legislature and Special Districts in the first instance, the Legislature resorted to different tactics to retroactively sanction what they had done and minimize the powers of the County Executive and County Attorney.

115. On or about February 28, 2019, the County Legislature, in a patently improper post-hoc attempt to acquire power that simply does not belong to the County Legislature or the County Chairman, held an impromptu special meeting for the sole purpose of divesting the County Attorney and County Executive of their authority under the County Charter.

116. The administrative rules for the Chemung County Legislature provide that any special meetings may only be held upon forty-eight hours' written notice to each Legislator pursuant to Resolution No. 08-100, a copy of which is attached as **Exhibit ____** and incorporated by reference herein.

117. The February 28 meeting of the County Legislature was held upon only 24-hour electronic notice provided to Legislators and the news media.

118. During the special meeting, the County Legislature passed Resolution No. 19-192 to limit the powers of the County Executive and County Attorney with respect to the appointment of the position of Attorney for the Legislature and Special Districts.

119. Resolution No. 19-192 falsely claimed that Chairman Manchester had the authority, as an "administrative head" under Section 309 of the Charter, to appoint the Attorney for the Legislature and Special Districts and falsely claimed that the position had been appointed by the Chairperson of the Legislature "since its inception."

120. Resolution No. 19-192 further stated that, in the future, all selections and appointments of the Attorney to the Legislature and Special Districts would be “vested within the exclusive authority and province of the Legislature of the County of Chemung.”

121. In passing Resolution No. 19-192, the Legislature effectively attempted to amend the terms of the County Charter in its favor—an act which cannot be done by mere resolution under New York law and the terms of the Charter itself.

122. Upon information and belief, the Legislature passed Resolution No. 19-192 to circumvent the County Executive’s veto power, as the County Executive lacks the power to veto a resolution under the terms of the Charter. See, e.g., Ex. B, Art. II § 206, p. 23 (providing that the County Executive can veto a local law or the budget, but not a resolution).

123. This is evidenced by the public stance taken by Legislator Sonsire on this issue, who has emphatically confirmed that, due to the Legislature’s use of a resolution to devise power to *itself* to perform a duty not provided to it within the Charter, the Legislature’s action was immune from attack by executive veto.

124. In fact, Legislator Sonsire later clarified that the objective of the County Legislature was to supplant the powers of the County Attorney by appointing its *own* attorney “to handle matters such as researching and drafting resolutions, local laws and other related documents.”

E. Local Law No. 2 Amending the County Charter

125. In further recognition of the fact that a mere resolution could not permit the Legislature to amend and substantially alter the terms of the County Charter, the Legislature resorted to sanctioning its own improper acts by introducing a new local law.

126. During the same special meeting on February 28, 2019 (which was held upon improper 24-hour notice), the County Legislature introduced Local Law No. 2 of 2019.

127. In introducing Local Law 2, the Legislature expressly and unequivocally recognized that Chairman Manchester *lacked any authority in the first instance* to appoint the Attorney for the Legislature and Special Districts, alter the County Executive’s appointment powers or displace the functions and duties of the County Attorney. Thus, when Local Law 2 was introduced to the individual legislators, it was described as “a local law . . . which actually goes into the charter and clarifies some of the arguments and language that has been interpreted by both the Legislature Branch and the Executive Branch differently.” [add cite to FB video above]

128. Simply put, Local Law No. 2, as drafted, seeks to amend the County Charter for the sole purpose of bestowing upon the County Legislature and the Chairman of the Legislature power it did not previously have.

129. Overall, Local Law No. 2 purports to enact the following sweeping and improper changes to the structure of County Government:

- a) Divests the County Executive and County Attorney of the authority to appoint the Attorney for the Legislature and Special Districts, a position housed within the Department of Law under the County Executive’s supervisory powers;
- b) Grants the Chairman of the Legislature the right to appoint an attorney to fulfill the position;
- c) Supplants the County Attorney’s authority under the County Charter and New York law to serve as the legal advisor to the Legislature on all matters involving an official act of a civil nature by designating the Attorney to the Legislature and Special District as the “sole legal advisor” to the Legislature;
- d) Divests the County Executive of its supervisory authority over the Special Districts, administrative units in County government organized under the Executive Branch;

- e) Supplants the County Attorney's authority under the County Charter and New York law to draft and prepare local laws, resolutions and ordinances by granting such powers to the Attorney to the Legislature and Special Districts; and
- f) Minimizes the County Attorney's role to serving solely as an advisor to the County Executive.

See Ex. ____.

130. Thus, although Local Law 2 purports to “clarify” the appointment and duties of the Attorney for the Legislature and Special Districts, it does absolutely nothing of the sort. Instead, it creates an entirely new attorney position with new duties, responsibilities and job descriptions that vary significantly from those previously set forth in the County Charter and the Civil Service paperwork initially submitted for the position.

131. Indeed, when the position was initially created, its job description included an equal split between performing services for the Special Districts, which are administrative units under the Executive Branch, and the County Legislature.

132. Local Law 2, however, purports to create a new position that is intended solely to serve as independent legal counsel to the Legislature.

133. When it introduced Local Law 2 at the February 28 special meeting, the Legislature made several materially false representations concerning the Local Law and its relation to the County Charter.

134. Chief among them were assertions made by Attorney Maggs, who was present at the meeting. Attorney Maggs falsely claimed that the position of the Attorney for the Legislature and Special Districts was created within the “Department of the Legislature” and not the Department of Law under Article XVI of the County Charter.

135. Specifically, Attorney Maggs falsely represented the following:

“[W]hen the position was created, it was created in a department of the legislature and not in the department of law. So, we have many departments—obviously, we have department heads. The county attorney is the head of the department of law, and the position was created and it exists within civil service law within the department of the legislature.”

See [cite to video].

136. Attorney Maggs further misrepresented that the position was created in the “department of the Legislature” within Resolution No. 01-120.

137. However, as demonstrated by the clear terms of Resolution No. 01-120, the position was created under the express authority of the Article XVI and the Department of Law.

138. Contrary to Attorney Maggs’ assertion, no “Department of Legislature” exists within the County Charter.

139. During a County Legislative Meeting on or about March 11, 2019, the County Legislature passed Resolution No. 19-254 adopting Local Law No. 2.

140. After passing Local Law 2 during the March 11 meeting, the Legislature, in yet another attempt to sanction its own prior wrongful conduct, passed Resolution No. 19-253, which purported to ratify the Legislature’s failure to provide requisite notice of its special meeting on February 28, 2019. A copy of Resolution No. 19-253 is attached as **Exhibit ____** and incorporated by reference herein.

141. Local Law 2, as presently implemented within the County, divests the County Executive of his ability to review and approve Executive legal acts, including resolutions stemming from administrative units or departments of government within the Executive Branch.

142. Prior to Local Law 2’s adoption, the County Executive enjoyed the authority to review resolutions that were sent to the Legislature for action prior to their adoption.

143. This practice has now been eliminated as a direct result of Local Law 2.

Retroactive Operation of Local Laws

144. Respondents have openly conceded that the purpose of Local Law 2 is to render Petitioners' legitimate claims in the First Proceeding moot, by retroactively ratifying the Legislature's prior unauthorized appointment of Attorney Maggs.

145. In a written blog post dated June 25, 2019, Legislator Sonsire confirmed Respondents' intent in passing Local Law 2, and claimed that the "entire issue is now legal moot" as a result of the new Local Law. A copy of this blog post is attached as **Exhibit ____** and incorporated by reference herein.

146. Legislature Sonsire further admitted that Local Law 2 was designed to bestow upon the Legislature power it did not previously have under the express terms of the County Charter by "clean[ing] up any perceived ambiguity between the Charter and the actual practice in Chemung County."

147. Local Law 2, however, cannot reach back in time to right the Legislature's prior wrongs.

148. Under well-settled principles of New York law and statutory construction, a local law cannot have retroactive operation unless there is a clear expression within the terms of the law itself calling for a retroactive application.

149. Absent such a clear expression, local laws must be interpreted to provide for only prospective application.

150. This rule has been codified in New York's Statutes Law, which provides that "an amendment will have prospective application only, and will have no retroactive effect unless the language of the statute clearly indicates that it shall receive a contrary interpretation." See Statutes Law § 52.

151. In the event a local law expressly directs, by its terms, that it is to take effect immediately, a retroactive application is improper.

152. Section 3 of Local Law 2 provides that “this Local Law shall take effect immediately upon appropriate filing with the Department of State pursuant to the provision of the Municipal Home Rule Law.” See Ex. ____.

153. Local Law 2 contains no statement of intent that it apply retroactively.

154. The Legislature never expressly stated an intent for Local Law 2 to apply retroactively during any meetings.

155. Instead, during the February 28 meeting, the Legislature stated that the purpose of Local Law 2 was to prospectively “clarify” the language within the County Charter moving forward.

Mandatory Referendum Requirement

156. Pursuant to Section 23 of the Municipal Home Rule Law, a local law is subject to mandatory referendum if it “abolishes, transfers or curtails any power of an elective officer.”

157. Thus, in the event a local law infringes upon the powers of an elective officer, it “shall be submitted for the approval of the electors at a general election of state or local government officers in such local government held not less than sixty days after the adoption thereof unless such local law provides for its submission for approval of the electors at a special election.” See Municipal Home Rule Law § 23.

158. If a local law subject to mandatory referendum fails to provide for such a referendum, it must be declared invalid under New York law.

159. Section 3002 of the County Charter further provides that any amendment to the County Charter that “changes the powers of an elective County officer, shall be subject to mandatory referendum.” See Ex. B, p. 69.

160. The ability of elected officials to appoint and to supervise units of government under a framework embodied within a county charter system constitutes “powers” under Section 23 of the Municipal Home Rule law, which cannot be abolished, curtailed or transferred absent a mandatory referendum that permits the public a say in the matter.

161. Local Law 2 abolishes, curtails and transfers the County Executive’s power to not only appoint the Attorney for the Legislature and Special Districts, but also to exert supervisory authority of the position, particularly as it relates to the provision of legal advice for the Special Districts—administrative units in County government of which the County Executive is the head.

162. Despite that Local Law 2 is clearly subject to a mandatory referendum, the terms of Local Law 2 instead only provide for a “referendum on petition,” otherwise known as a “permissive referendum.”

163. In enacting Local Law 2, the Legislature provided no explanation as to why a permissive, rather than mandatory, referendum was appropriate. Instead, during the February 28 meeting, Legislator Sonsire claimed, with no support in law or fact, that Local Law 2 “would call for what is known as a permissive referendum.” See [cite video].

164. Ms. Sonsire further went on to explain that the purpose of the permissive referendum was to ensure that Local Law 2 “would not go to a public vote unless the county executive were able to amass ten petitions constituting ten percent of the voting population.” See [cite video].

165. In a public letter dated April 30, 2019, Legislature Mark Margeson condemned the Legislature for failing to provide for a mandatory referendum prior to passing Local Law 2. A copy of Legislature Margeson’s letter is attached as Exhibit ____ and incorporated by reference herein.

166. Specifically, Legislature Margeson explained that he voted against Local Law 2 because it “change[s] the authority of the County Executive without a public referendum that violates Municipal Home Rule Law. I voted against this action because I viewed it as a violation of the right of the constituents of Chemung County . . . it is extremely important that the information is presented in a positive and professional manner to the community.” See Ex. ____.

The County Executive’s Veto and The Legislature’s Veto Override

167. Section 206 of the County Charter permits the County Executive to veto local laws within fifteen (15) days after their passage.

168. In the event the County Executive vetoes a local law, he must “return it to the Clerk with his objections stated in writing, and the Clerk shall present the same with such objections to the County Legislature at its next regular or special meeting, called for that purpose, and such objections shall be entered in its journal. The County Legislature, within forty-five (45) days after its return to the Clerk, may by a three-fifths vote of the whole number of its members, over-ride such veto.” See Ex. ____, p. 23.

169. The County Executive properly submitted his veto objections to the Clerk of the Legislature by letter dated March 26, 2019, a copy of which is attached as **Exhibit** ____ and incorporated by reference herein.

170. The County Executive’s veto objections included, among other things, an objection on separation of powers grounds, as well an objection that Local Law 2 violates

Section 3002 of the County Charter and the Municipal Home Rule Law because it only calls for a permissive, rather than mandatory, referendum.

171. Specifically, the County Executive stated that “[t]he purpose of the mandatory referendum is to preserve the sanctity of the right of the people of this County to vote on matters that substantially alter County governance. Because Local Law No. 2 seeks to dismantle and drastically undercut the authority of the County Executive and the County Attorney . . . the need for a mandatory referendum is paramount.” See Ex. ____.

172. In response, Attorney Maggs prepared a memorandum dated March 29, 2019 to the Legislature, addressing the objections raised by the County Executive. A copy of Attorney Maggs’ March 29, 2019 memorandum is attached as **Exhibit ____** and incorporated by reference herein.

173. In his March 29 memorandum, Attorney Maggs completely ignored the substantive legal objections raised by the County Executive. Instead, Attorney Maggs classified the County Executive’s objections as mere “policy reasons [as to why] he disagrees with the proposed law.” See Ex. ____.

174. In response to the County Executive’s assertion that Local Law 2 was subject to mandatory referendum, Attorney Maggs curiously and inexplicably claimed that “the County Executive’s objections do not list which of his enumerated powers are ‘transferred’ or ‘curtailed’ by the local law.”

175. The County Executive’s veto objections, however, clearly outlined how Local Law 2 abolishes, curtails and transfers the County Executive’s supervisory authority over the Department of Law as an administrative unit of government under the Executive Branch

pursuant to Article XVI and Article III and specifically noted that Local Law 2 “alters the County Executive’s appointment powers.”

176. At a meeting of the Legislature held on April 8, 2019, the Legislature adopted Resolution No. 19-326, overriding the County Executive’s veto and officially adopting Local Law 2, without a mandatory referendum. A copy of Resolution No. 19-326 is attached as **Exhibit ____** and incorporated by reference herein.

177. Local Law 2 was filed on May 30, 2019 with the Secretary of State, and a notice of adoption was published in County newspapers on or about June 10, 2019. A copy of the notice of adoption and accompanying memorandum from the Clerk of the Legislature is attached as **Exhibit ____** and incorporated by reference herein.

AS AND FOR A FIRST CAUSE OF ACTION

(Declaratory Relief—Local Law 2 Cannot Apply Retroactively)

178. Petitioners repeat and reincorporate each of the foregoing individual allegations as if fully set forth herein.

179. A legal act, such as Local Law 2 here, cannot be applied retroactively absent a clear express intent for retroactive operation.

180. Local Law 2 does not expressly state that it is intended to apply retroactively.

181. Local Law 2 instead directs that it is to take effect “immediately.”

182. The Legislature, in claiming that the purpose of Local Law 2 was to “clarify” the language in the County Charter, intended for it to apply prospectively.

183. Local Law 2 cannot retroactively apply to the Legislature’s prior unauthorized appointment of Attorney Maggs to the position of Attorney for the Legislature and Special Districts.

184. Local Law 2 cannot retroactively sanction the Legislature's prior unauthorized appointment of Attorney Maggs to the position of Attorney for the Legislature and Special Districts.

185. Respondents have acted in excess of jurisdiction by permitting Attorney Maggs to serve as the Attorney for the Legislature and Special Districts, because Attorney Maggs was never properly appointed.

186. Respondent Attorney Maggs is presently acting in excess of his jurisdiction, because he was never properly appointed as the Attorney for the Legislature and Special Districts.

187. Respondents acted arbitrarily, capriciously, in excess of jurisdiction and/or lawful procedure and contrary to law in permitting Attorney Maggs to serve in the position as Attorney for the Legislature and Special Districts.

188. Therefore, Petitioners are entitled to an order declaring that Local Law 2 does not apply retroactively, and further annulling Local Law 2 in its entirety.

AS AND FOR A SECOND CAUSE OF ACTION

(Violation of Municipal Home Rule Law)

189. Petitioners repeat and reincorporate each of the foregoing individual allegations as if fully set forth herein.

190. Municipal Home Rule Law § 23 provides that a local law is subject to mandatory referendum if it “abolishes, transfers or curtails any power of an elective officer.”

191. Thus, in the event a local law infringes upon the powers of an elective officer, it “shall be submitted for the approval of the electors at a general election of state or local government officers in such local government held not less than sixty days after the adoption thereof unless such local law provides for its submission for approval of the electors at a special election.”

192. Section 3002 of the County Charter further provides that any amendment to the County Charter that “changes the powers of an elective County officer, shall be subject to mandatory referendum.”

193. The authority of an elected official to exercise appointment and supervisory rights constitute “powers” that cannot be curtailed, abolished or transferred absent a mandatory referendum.

194. The County Executive is an elective officer in County government.

195. The position of Attorney for the Legislature and Special Districts was created within the County’s Department of Law, which is headed by the County Attorney and under the direct supervisory authority of the County Executive.

196. Under Section 302 of the Charter, the County Executive has the power and duty to supervise, organize and reorganize departments or administrative departments, the head of which he has the power to appoint.

197. The County Executive has the power to appoint the County Attorney as the head of the Department of Law pursuant to Section 1601 of the Charter.

198. The County Executive has the power to supervise, organize, and reorganize the Department of Law.

199. The County Executive appointed the first attorney to serve in the position of Attorney for the Legislature and Special Districts in 2001, authorized under the Department of Law.

200. The County Executive has the power to appoint members of administrative units pursuant to Section 2704 of the Charter.

201. The County Executive has the power to delegate administrative functions under Section 2705 of the Charter.

202. As such, the County Executive has appointment power over the position for the Attorney for the Legislature and Special Districts, a position created under the Department of Law, an administrative unit under the direct supervisory authority of the County Executive.

203. The Special Districts within County government are under the administrative authority of the County Executive.

204. The County Executive has the power to oversee, supervise and appoint all heads of the Sewer District and Solid Waste district pursuant to Section 309 and Section 2901 of the Charter.

205. The position of Attorney for the Legislature and Special Districts allots 50% of work time to the Legislature and 50% of work time to two special Districts, the Sewer District and Solid Waste Management District.

206. Therefore, the County Executive has the power to appoint and delegate functions to the Attorney for the Legislature and Special Districts, because the Special Districts are under the authority of the County Executive.

207. Local Law 2 abolishes, curtails and transfers the County Executive's power to appoint the Attorney for the Legislature and Special Districts, and to exert supervisory authority of the position within the Department of Law, an administrative unit within the Executive Branch.

208. Local Law 2 only provides for a permissive referendum.

209. Respondents acted arbitrary and capriciously, in excess of jurisdiction and/or contrary to law and in violation of lawful procedure by enacting Local Law 2 without requiring a mandatory referendum, as required under their own County Charter.

210. Therefore, Local Law 2 should be annulled and declared invalid as violative of the Municipal Home Rule Law and the County Charter.

AS AND FOR A THIRD CAUSE OF ACTION

(Declaratory Relief—Local Law 2 Curtailing the County Executive's Appointment Powers Must be Subject to Mandatory Referendum)

211. Petitioners repeat and reincorporate each of the individual allegations above as if fully set forth herein.

212. Municipal Home Rule Law § 23 provides that a local law is subject to mandatory referendum if it “abolishes, transfers or curtails any power of an elective officer.”

213. Thus, in the event a local law infringes upon the powers of an elective officer, it “shall be submitted for the approval of the electors at a general election of state or local government officers in such local government held not less than sixty days after the adoption thereof unless such local law provides for its submission for approval of the electors at a special election.”

214. Section 3002 of the County Charter further provides that any amendment to the County Charter that “changes the powers of an elective County officer, shall be subject to mandatory referendum.”

215. The authority of an elected official to exercise appointment and supervisory rights constitute “powers” that cannot be curtailed, abolished or transferred absent a mandatory referendum.

216. The County Executive is an elective officer in County government.

217. The position of Attorney for the Legislature and Special Districts was created within the County’s Department of Law, which is headed by the County Attorney and under the direct supervisory authority of the County Executive.

218. Under Section 302 of the Charter, the County Executive has the power and duty to supervise, organize and reorganize departments or administrative departments, the head of which he has the power to appoint.

219. The County Executive has the power to appoint the County Attorney as the head of the Department of Law pursuant to Section 1601 of the Charter.

220. The County Executive has the power to supervise, organize, and reorganize the Department of Law.

221. The County Executive appointed the first attorney to serve in the position of Attorney for the Legislature and Special Districts in 2001, authorized under the Department of Law.

222. The County Executive has the power to appoint members of administrative units pursuant to Section 2704 of the Charter.

223. The County Executive has the power to delegate administrative functions under Section 2705 of the Charter.

224. As such, the County Executive has appointment power over the position for the Attorney for the Legislature and Special Districts, a position created under the Department of Law, an administrative unit under the direct supervisory authority of the County Executive.

225. The Special Districts within County government are under the administrative authority of the County Executive.

226. The County Executive has the power to oversee, supervise and appoint all heads of the Sewer District and Solid Waste district pursuant to Section 309 and Section 2901 of the Charter.

227. The position of Attorney for the Legislature and Special Districts allots 50% of work time to the Legislature and 50% of work time to two special Districts, the Sewer District and Solid Waste Management District.

228. Therefore, the County Executive has the power to appoint and delegate functions to the Attorney for the Legislature and Special Districts, because the Special Districts are under the authority of the County Executive.

229. Local Law 2 abolishes, curtails and transfers the County Executive's power to appoint the Attorney for the Legislature and Special Districts, and to exert supervisory authority

of the position within the Department of Law, an administrative unit within the Executive Branch.

230. Local Law 2 only provides for a permissive referendum.

231. Therefore, Local Law 2 should be annulled and declared invalid as violative of the Municipal Home Rule Law and the County Charter.

232. As such, Petitioners are entitled to a judgment declaring that Local Law 2 is not effective unless and until it is subject to mandatory referendum.

AS AND FOR A FOURTH CAUSE OF ACTION

(Local Law 2 Violates New York County Law)

233. Petitioners repeat and reincorporate each of the foregoing allegations as if fully set forth herein.

234. New York County Law § 501 provides that a county attorney “shall” serve as the legal advisor to a county legislative body and to every officer whose compensation is paid from county funds “in *all* matters involving an official act of a civil nature.”

235. New York County Law § 501 is a general law under the Municipal Home Rule Law.

236. Pursuant to New York County Law § 502, if any duties and functions of a county attorney are to be delegated, they must be delegated by the county attorney to an assistant county attorney who serves at the pleasure of the county attorney.

237. The preparation of resolutions, ordinances and local laws for adoption by a county legislative body is an official act of a civil nature and a function of the County Attorney, which may not be transferred to a newly created office or position of employment by the Legislature.

238. Section 214 of Local Law 2 provides that the Attorney to the Legislature and Special Districts will serve as the “legal advisor to the Chemung County Legislature on matters of policy, procedure and application and interpretation of the law.”

239. It further provides that the position will require the attorney to “prepare resolutions, ordinances, legalizing acts and local laws, together with notices and other items in connection therewith.”

240. These are clearly functions reserved exclusively to the County Attorney as the legal advisor to the Legislature on all official acts of a civil nature pursuant to the County Law.

241. Local Law 2 is in direct violation of the County Law.

242. The position of the Attorney for the Legislature and Special Districts is authorized under the Department of Law, shares substantially similar duties to the County Attorney, and thus has been treated as an Assistant County Attorney in the County Budget and in compliance with the County Law.

243. In enacting Local Law 2, Respondents stripped the County Attorney of his ability to appoint his own Assistant County Attorney in violation of the County Law.

244. By passing Local Law 2, Respondents further divested the County Attorney of its ability to delegate functions to the Attorney for the Legislature and Special Districts as an Assistant County Attorney, in violation of County Law § 502.

245. Section 501 of the County Law may not be changed, transferred, or amended by a local law transferring the duties and powers of the County Attorney to another office or individual.

246. As such, Petitioners are entitled to a judgment declaring Local Law 2 invalid and annulling Local Law 2 in its entirety.

AS AND FOR A FOURTH CAUSE OF ACTION
(Violation of the Doctrine of Separation of Powers)

247. Petitioners repeat and reincorporate each of the foregoing allegations as if fully set forth herein.

248. Under the doctrine of separation of powers, each department of government should be free from interference, in the lawful discharge of duties expressly conferred, by either of the other branches.

249. The doctrine of separation of powers is designed to impede one branch of government from impermissibly seeking to maximize power.

250. Attempts of one branch of government to undermine the carefully planned checks and balances designed to preserve the powers of the other branches cannot be tolerated and must be annulled.

251. The powers granted to each branch of the Chemung County government are provided expressly in the Chemung County Charter.

252. The primary function of the County Charter is to ensure the “separation of County Legislative and Executive functions and responsibilities.” Petition, Ex. A, § 101.

253. The County Charter establishes a County Charter form of government, which, under Article 4 of the Municipal Home Rule Law, empowers counties to adopt and amend a county charter and split power between an elected legislative body as well as an elected county executive.

254. Municipal Home Rule Law § 33 permits a County to provide for an elected executive with the power to veto acts of the legislative body.

255. Prior to the adoption of Local Law 2, resolutions and other legal acts stemming from an administrative unit or department in County government headed by the County Executive were submitted to the County Executive for review prior to reaching the Legislature.

256. Local Law 2 eliminates this practice in its entirety.

257. As currently implemented within the County, Local Law 2 permits the Legislature, under the auspices of the Attorney for the Legislature and Special Districts, to evaluate, draft and prepare resolutions – including resolutions promulgated out of departments and administrative units of which the County Executive enjoys supervisory authority over – without sending such resolutions to the County Executive for his review.

258. Local Law 2, in effect, permits the Legislature to bypass the Executive Branch in adopting legal acts in County governance.

259. Local Law 2 should, therefore, be declared invalid and annulled in its entirety.

AS AND FOR A FIFTH CAUSE OF ACTION

(Violation of Open Meetings Law)

260. Petitioners repeat and reallege each of the foregoing allegations as if fully set forth herein.

261. The County Legislature is a public body subject to the Open Meetings Law.

262. The Open Meetings Law requires every public meeting to be open to the public.

263. For meetings not scheduled a week in advance, public notice must be provided at a reasonable time prior to a meeting.

264. When the County Legislature introduced Local Law 2 purporting to amend the County Charter for the sole purpose of ratifying the Legislature's improper appointment of the

Attorney for the Legislature and Special Districts after the fact, it did so at a special meeting upon approximately 24-hour notice.

265. Such notice is not reasonable under the Open Meetings Law.

266. More than a week later, the County Legislature passed Resolution 19-253, claiming that it was unable to provide adequate notice due to “extraordinary circumstances.”

267. Resolution No. 19-253 constitutes an impermissible post hoc justification for the County Legislature’s violation of the Open Meetings Law.

268. Respondents further acted in excess of jurisdiction and violated their own rules, including Resolution No. 08-100 by failing to provide each Legislator with notice of a special meeting in writing at least 48 hours prior to the meeting time.

269. Therefore, Local Law 2 should be annulled and declared invalid in its entirety.

WHEREFORE, Petitioners respectfully request that the Court enter a judgment (1) annulling and invalidating Resolution No. 19-254 adopting Local Law 2 in its entirety, (2) declaring that Local Law 2 has no retroactive operation and cannot ratify the prior appointment of Attorney Maggs to the position of Attorney for the Legislature and Special Districts within the Department of Law, and (3) further declaring that any further attempt by the County Legislature to enact a local law to amend the Charter and vest the Legislature with the authority to appoint an Attorney for the Legislature and Special Districts is subject to mandatory referendum.

Dated: June 28, 2019
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

By: _____

Robert S. Rosborough IV, Esq.
Gabriella R. Levine, Esq.
One Commerce Plaza
Albany, New York 12260
(518) 487-7600
Attorneys for Petitioners

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF CHEMUNG)

CHRISTOPHER MOSS, being duly sworn, deposes and says as follows:

1. I am County Executive of the County of Chemung and a Petitioner in this matter.

2. I have read the foregoing Verified Petition and Complaint and the same is true to my own knowledge, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true. The source of my belief is my review of the pertinent documents and information provided by my client.

Christopher Moss

Sworn to before me this

____ day of June, 2019

Notary Public